

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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EDGAR GONZALEZ,

Plaintiff,

-against-

OFFICER SHARMAN

Defendant.

**ANSWER ON BEHALF  
OF DEFENDANT  
OFFICER SHARMAN**

16-CV-2826 (CBA)(LB)

**JURY TRIAL  
DEMANDED**  
-----X

Defendant Officer Samuel Sharman by his attorney, Zachary W. Carter, Corporation Counsel of the City of New York, as and for his answer to the Complaint, respectfully alleges, upon information and belief, the following:

1. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “I” of the Complaint and its subparts, except admits only that plaintiff purports to provide a valid contact address for himself and defendant Sharman.<sup>1</sup>

2. Denies the allegations set forth in paragraph “II” of the Complaint, except admits only that on May 24, 2014, Officer Sharman lawfully arrested plaintiff shortly after a complaining witness informed Sharman that plaintiff struck the victim and her brother several times with an expandable baton.

3. Denies the allegations contained in paragraph “II(A)” of the Complaint.

4. Denies the allegations set forth in paragraph “III” of the Complaint, except admits only that plaintiff purports to seek relief as stated therein.

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<sup>1</sup> Page “2 of 6” of the Complaint as filed is illegible. As such, should there be any factual allegations possible on “page 2 of 6,” no response is required.

**AS AND FOR A FIRST AFFIRMATIVE DEFENSE:**

5. The Complaint fails, in whole or in part, to state a claim upon which relief can be granted.

**AS AND FOR A SECOND AFFIRMATIVE DEFENSE:**

6. Defendant Sharman has not violated any rights, privileges, or immunities under the Constitution or laws of the United States or the State of New York or any political subdivision thereof, nor has Sharman violated any acts of Congress providing for the protection of civil rights.

**AS AND FOR A THIRD AFFIRMATIVE DEFENSE:**

7. There was probable cause for Plaintiff's arrest, detention, and prosecution.

**AS AND FOR A FOURTH AFFIRMATIVE DEFENSE:**

8. Any injury alleged to have been sustained resulted from Plaintiff's own culpable or negligent conduct or the conduct of third parties and was not the proximate result of any act of defendant.

**AS AND FOR A FIFTH AFFIRMATIVE DEFENSE:**

9. Plaintiff provoked any incident.

**AS AND FOR A SIXTH AFFIRMATIVE DEFENSE:**

10. To the extent any force was used, such force was reasonable, necessary, and justified.

**AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE:**

11. Plaintiff has failed to mitigate his alleged damages.

**AS AND FOR AN EIGHTH AFFIRMATIVE DEFENSE:**

12. Defendant Sharman has not violated any clearly established constitutional or statutory rights of which a reasonable person would have known and therefore is entitled to qualified immunity.

**AS AND FOR A NINTH AFFIRMATIVE DEFENSE:**

13. Plaintiff's claims may be barred, in whole or in part, because Plaintiff failed to comply with all conditions precedent to suit.

**AS AND FOR A TENTH AFFIRMATIVE DEFENSE:**

14. To the extent plaintiff's Amended Complaint can be read to assert state law claims against the defendant Sharman, plaintiff has failed to comply with all conditions precedent to suit including, but not limited to, New York General Municipal Law §50 et seq., including §§ 50-e, 50-i, and 50-h.

**[Remainder of Page Left Intentionally Blank]**

**WHEREFORE**, Defendant Sharman requests a judgment dismissing the Complaint in its entirety, together with the costs and disbursements of this action, and such other and further relief as the Court may deem just and proper.

Dated: New York, New York  
October 6, 2016

ZACHARY W. CARTER  
Corporation Counsel of the  
City of New York  
*Attorney for Defendant Sharman*  
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By: \_\_\_\_\_ / s/

Colin McCann Ceriello  
*Assistant Corporation Counsel*  
Special Federal Litigation Division

cc: *VIA ECF*

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